

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1703 of 2000

with

CIVIL APPLICATION NO. 7697 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

UNITED INDIA INSURANCE CO LTD.

Versus

KESHAVJI MULJI DANICHA

Appearance:

MR PV NANAVATI for Petitioner

CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE K.M.MEHTA

Date of decision: 10/10/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

In this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the new Act') the appellant-insurer, original opponent No. 3, has challenged the impugned order below Exh. 16 recorded in M.A.C.P. No. 255 of 1998. The impugned order came to be recorded by the Tribunal under Section 163A of the new Act.

2. Respondent No. 1, Shri Keshavji Mulji Danicha, being of unsound mind, filed the aforesaid claim petition through his wife, Smt. Laxmiben Keshavji Danicha and in course of the said claim under Section 166 of the new Act submitted an application for interim compensation upon the basis of the structured formula, invoking the aid of the provisions of Section 163A of the Act. The claimant prayed for an amount of Rs. 8,44,200/-, the break-up of which is mentioned in application Exh. 16. The original claimant is a disabled living victim of violent road mishap. He has sustained permanent disablement. His mental faculty is also affected and disabled on account of the serious injuries sustained by him in a vehicular accident which occurred on 21.1.1998. The original claimant, aged about 30 years, was travelling in a jeep in course of his employment with original opponent No. 5, one M.V. Dafda. When the said jeep reached near the house of Smt. Ushaben Thacker about 1 km. away from Adipur on Adipur-Gandhidham road at that time a truck bearing registration No. GJ-1-X-5119 which was parked on the road without any parking light and signals should not be noticed by the driver of the jeep as he was dazzled by the light of the on-coming vehicles, as a result of which the original claimant sustained serious injuries. He lost his right eye. His psychological faculty, also, seriously, disabled.

3. The Tribunal considering the prima facie evidence and facts and circumstances emerging from the record and bearing in mind the underlying design of Section 163A of the new Act, granted an amount of Rs. 6,87,000/- to the original claimant by way of compensation during the pendency of the main petition which is challenged before us in this appeal. In our opinion, the impugned order could not be said to be unjustified or unreasonable. Again, it is passed during the pendency of the main petition under Section 166 of the new Act. The amount of compensation is directed to be paid in the ratio of 35% and 65% in cash and by deposits, respectively. In our opinion, this appeal is therefore, required to be dismissed at the threshold while modifying the aforesaid ratio so as to safeguard the interest of the disabled

claimant who was in the prime of his youth at the relevant time and who was earning an amount of Rs. 6,500/- per month as per the prima facie, evidence relied on by the Tribunal and who is unable to take of himself on account of disabled mind. Therefore, the Tribunal is permitted to pay, only, an amount of 10% of the award under the impugned order by way of account payee cheque to the claimant through his wife and the remaining amount shall be invested in F.D.R.s in nationalised bank or Scheduled bank or any other Government securities yielding higher rate of interest, initially, for a period of six years on the same terms and conditions incorporated in the impugned order.

4. In the result, the appeal shall stand dismissed. The Civil Application would not survive. The amount of Rs. 25,000/- deposited before this Court along with appeal under Section 173 of the new Act, shall be transmitted by the Registry to the Tribunal concerned, immediately, for being disbursed in terms of the aforesaid directions.

In view of the judgement passed in the main matter, no orders are passed on the Civil Application.

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